

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

STERLING LAMAR JACKSON,)
vs.)
Petitioner,)) NO. CIV-05-0182-HE
JUSTIN JONES,)
Respondent.)

ORDER

Petitioner Sterling Lamar Jackson instituted this action seeking a writ of habeas corpus. Consistent with 28 U.S.C. § 636(b)(1)(B), the matter was referred to Magistrate Judge Bana Roberts, who has recommended that the petition be dismissed as unexhausted. She found that because the petitioner was not challenging “the merits of a disciplinary board proceeding” the Tenth Circuit’s decision in Gamble v. Calbone, 375 F.3d 1021 (10th Cir. 2004) was inapplicable. The petitioner has filed an objection, arguing that exhaustion is not required because he has no available state avenue of redress.¹

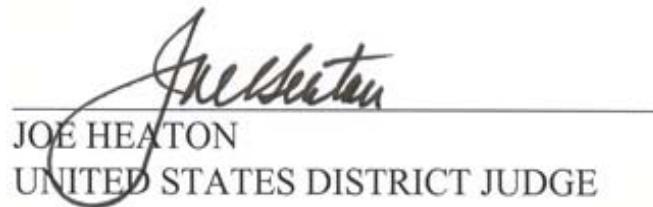
Having considered de novo the petitioner's argument, the court concurs with Magistrate Judge Robert's analysis and adopts her Report and Recommendation. Accordingly, the petition is dismissed without prejudice.²

¹The petitioner asserts that the rules of the Oklahoma Court of Criminal Appeals governing appeals out of time are inadequate to protect the rights of pro se prison litigators.

²The petitioner's request that the court stay the proceedings pending his exhaustion of his state remedies is denied.

IT IS SO ORDERED.

Dated this 14th day of August, 2006.



JOE HEATON
UNITED STATES DISTRICT JUDGE